Kenneth and Denise Cook
300 Newt Gulch RD
Wilderville OR 97543

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,

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Case # 1: 10cv3121

Plaintiff, Denise and Kenneth Cook

vs.

Defendant : Beneficial HSBC Mortgage

Chase Home Finance,

Prudential, Sherm Heater Inc. Realtors

PETITION FOR TEMPORARY INJUNCTION

Date: January 20th 2011

(1) Comes now, Denise and Kenneth Cook; hereinafter referred to as "Petitioner," and moves the court for relief as herein requested:

PARTIES

(2) Petitioner is, Denise and Kenneth Cook 300 Newt Gulch Rd Wilderville OR 97543 . Currently Known Defendant(s) are/is: Beneficial, HSBC, Chase Home Finance, Prudential, Sherm Realtors

STATEMENT IN SUPPORT

(3) Petitioner, entered into a consumer contract for the refinance of a primary residence located at , hereinafter referred to as the "property."

(4) Plaintiff has reason to believe and does believe that Defendants committed numerous acts of fraud against Plaintiff in furtherance of a carefully crafted scheme intended to defraud Plaintiff.

(5) Plaintiff, in an effort to determine the validity of said allegations has sought the answers through appropriate remedies offered by law. A Qualified Written Request was sent to

Defendants On _8/16/2010 to bring to light numerous egregious accounting errors in Plaintiffs account and closing paperwork.

(6) Defendant received Plaintiffs Qualified Written Request on 8/19/2010(certified mail receipt attached as exhibit A). Plaintiff did file a response within the 60 days time frame, however the entire answer received was non responsive to Plaintiffs requests.

(7) Secondly, within Plaintiffs QWR, Plaintiff demanded {his/her} right created under the statute UCC 3-501, (b)(2) "Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument...". This Statute not only creates a right, it also creates a remedy.

(8) Being that the basis of Plaintiffs suit is in relation to fraud, and conspiracy to commit fraud, the request for presentment under said right, UCC 3-501, which has gone ignored, has now created the inference that Defendant not only fails to have possession of the instrument demanded, but their failure to make said instrument available shows Plaintiffs due diligence in trying to rectify the foreclosure situation.

(9) Due to the fact that Plaintiff tried to rectify the issue at hand, and the issue went ignored by Defendant, Plaintiffs requests for injunction should be granted.

(10) On 11/04/2010 Plaintiffs filed suit against the defendant. Defendants received suit on 11/16/2010 by Process Server,

(11) The Defendants did not respond.

(12) On 12/8/2010 Plaintiffs filed for a No Answer Default, and are currently

waiting for the Judge to answer their request.

(13) On 1/14/2011 Plaintiffs received notice that the Foreclosure was completed

REQUEST FOR TEMPORARY INJUNCTION

(14) Plaintiffs will suffer imminent and irreparable injury if defendant is not enjoined from foreclosing on the property owned by Plaintiff. Fed. R. Civ. P. 65(b)(1); *see Sampson v. Murray*, 415 U.S. 61, 88-89 & n.59, 94 S. Ct. 937, 951-52 & n.59 (1974).

(15) Plaintiffs are self employed. The business is located at this address, and loss of income from the sale/eviction would render them without income and a means to support themselves.

(16) Plaintiffs elderly mother, who is disabled, by a brain aneurism, is located on the same property under a hardship arrangement. The sale/eviction of the property would leave her without a home and cause hardship on her behalf.

(17) Plaintiffs nephew, whom is disabled with hydrocephalus, is living with Plaintiffs mother under a hardship arrangement. The sale/eviction of the property would leave him without a home or care and cause irreparable injury.

(18)There is no adequate remedy at law because once the foreclosure sale/eviction has taken place Plaintiff will suffer the complete loss of the property as defendant will sell the property to a third party who will have a right to possession without regard to the claims Plaintiff has against defendant. {*See N. Cal. Power Agency v. Grace Geothermal Corp., 469 U.S. 1306, 1306, 105 S. Ct. 459, 459 (1984); Wilson v. Ill. S. Ry. Co., 263 U.S. 574, 576-77, 44 S. Ct. 203, 203-04 (1924); Winston v. Gen. Drivers, Warehousemen & Helpers Local Un. No. 89, 879 F. Supp. 719, 725 (W.D. Ky. 1995.*

(19) There is a substantial likelihood that plaintiff will prevail on the merits. *Schiavo v. Schiavo*, 403 F.3d 1223, 1225 (11th Cir. 2005). Plaintiff will be able to show that:

- that the alleged real party in interest is unable to prove standing to foreclose against and sell the property;
- Defendant has no agency to represent the real party in interest;
- that the lender committed numerous acts, as listed above, that have the effect of rendering the contract, through which defendant claims authority, void and unenforceable.

(20) The threatened harm to plaintiff outweighs the harm that a preliminary injunction would inflict on defendant. *Schiavo*, 403 F.3d at 1225-26. If defendant is temporarily restrained from selling the instant property, the defendant and plaintiff will benefit as if plaintiff is forced to vacate the property, the property will sit empty for the duration of the action. Plaintiff will suffer loss of the use of said property and will loose opportunity to maintain same and defendant will suffer loss by having to maintain an empty property that cannot be insured.

(21) Issuance of a preliminary injunction would not adversely affect the public interest and public policy because there are already a great number of empty houses with the current residential foreclosure mess. Adding more will simply increase the burden on the local as it will create opportunity for vandalism and further other criminal activity.

(22) Plaintiff is willing to post a bond in the amount the court deems appropriate.

(23) The court should enter this preliminary injunction without notice to defendant because plaintiff will suffer immediate and irreparable injury, loss, or damage if the order is not granted before defendant can be heard as **defendant has scheduled the above referenced eviction/sale after the 28th of January 2011. (No exact date was given but referenced to earliest possible date)** *First Tech. Safety Sys. v. Depinet*, 11 F.3d 641, 650 (6th Cir. 1993). If said sale is allowed to take place, Plaintiff will be irreparably harm. {*See O'Connor's Federal Rules, "Ex parte," ch. 2-D, §3.1.3, p. 77.*}

(24) Plaintiff asks the court to set the request for a preliminary injunction for hearing at the earliest possible time.

CONCLUSION

(25) Plaintiff has filed suit against defendant wherein Plaintiff has claimed numerous causes of action against defendant. A number of the allegations made by Plaintiff are incontrovertable by defendant, therefore, Plaintiff will prevail on a number of the above allegations by way if existing records. For these reasons, plaintiff asks the court to issue a preliminary injunction preventing defendant from foreclosing on the property.

PRAYER

(25) For these reasons, plaintiff asks that the court do the following:

a. Defendant be prevented from {evicting/selling} the property until and unless defendant prevails in the current litigation.

b. Enter judgment for plaintiff.

c. Award costs of court.

d. Grant any other relief it deems appropriate.

Respectfully Submitted,

VERIFICATION

I, , do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

The Person above, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document and acknowledged to me that he/she executed the same in his authorized capacity and that by his signature on this instrument who is the person who executed this instrument.

I certify under PENALTY OF PERJURY under the laws of this State that the foregoing paragraph is true and correct.

Witness my hand and official seal.

____

NOTARY PUBLIC IN AND FOR

THE STATE OF OREGON

Notary Seal

OFFICIAL SEAL
JUDITH F COOME
NOTARY PUBLIC - OREGON
COMMISSION NO. 450081
MY COMMISSION EXPIRES JUNE 16, 2014

Exhibit A

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HSBC Beneficial
P.O. Box 3425
Buffalo NY
14240-9733

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (*Printed Name*)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

AUG 19 2010

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7010 0290 0000 7070 2634

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540